Nos. 84-495, 84-1379

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

RICHARD THORNBURGH, et al.,
Appellants,

—vs.—

AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, et al.,
Appellees.

EUGENE F. DIAMOND, et al.,
Appellants,

—vs.—

ALLAN G. CHARLES, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURTS OF APPEALS FOR THE THIRD AND SEVENTH CIRCUITS

BRIEF FOR THE UNITARIAN UNIVERSALIST ASSOCIATION, AND TWENTY-TWO OTHER RELIGIOUS ORGANIZATIONS, AS *AMICI CURIAE*, IN SUPPORT OF APPELLEES

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INTEREST OF AMICI

This brief amici curiae is filed in support of appellees in both cases before the Court, by the following religious organizations: THE AMERICAN ETHICAL UNION; AMERICANS FOR RELIGIOUS LIBERTY; AMERICAN HUMANIST ASSOCIATION; BOARD FOR HOMELAND MINISTRIES, UNITED CHURCH OF CHRIST; B'NAI BRITH WOMEN; CATHOLIC WOMEN FOR REPRODUCTIVE RIGHTS; CATHOLICS FOR A FREE CHOICE; COORDINATING CENTER FOR WOMEN, UNITED CHURCH OF CHRIST; EPISCOPAL WOMEN'S CAUCUS; NATIONAL BOARD, YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF THE U.S.A.; NATIONAL COALITION OF AMERICAN NUNS; NATIONAL COUNCIL OF JEWISH WOMEN; NATIONAL FEDERATION OF TEMPLE SISTERHOODS; NATIONAL SERVICE CONFERENCE, AMERICAN ETHICAL UNION; OFFICE FOR CHURCH IN SOCIETY, UNITED CHURCH OF CHRIST; PIONEER WOMEN/NA'AMAT; PRESBYTERIAN CHURCH (U.S.A.); UNION OF AMERICAN HEBREW CONGREGATIONS; UNITARIAN

UNIVERSALIST ASSOCIATION; UNITARIAN UNIVERSALIST WOMEN'S FEDERATION; UNITED CHURCH OF CHRIST; UNITED SYNAGOGUE OF AMERICA; WOMEN'S LEAGUE FOR CONSERVATIVE JUDAISM.

The organizations joining this brief are or include representatives of Protestant, Catholic, Jewish and other faiths, reflecting a broad spectrum of religious believers in this country. These organizations are committed to principles of religious liberty; they also reflect a broad spectrum of beliefs about the morality of abortion.[1] Among the amici are denominations which adhere to

1. The positions of the Religious Coalition for Abortion Rights, of Americans for Religious Liberty, and of 36 national religious organizations which favor the right to choose abortion among which are the amici curiae, are contained in the Appendices A, B and C respectively at A-1, A-3, and A-4.

religious principles that permit, counsel, and even mandate abortion under certain circumstances. Others strongly discourage it under many circumstances. But all believe that the abortion decision is a deeply religious and personal one of ultimate dimension which must be relegated to the conscience of the individual woman free of governmental interference or coercion. They believe further that the effort to restrict abortion is generally rooted in an opposing theological position concerning the creation of human life and the beginning of human personhood; and that, in the face of religiously-based moral differences, government in a free society is without power to take sides.

It is the position of amici that the freedom of belief guaranteed by the First Amendment and principles of religious liberty require invalidation of this legislation

which has no purpose and effect other than to encroach upon and ultimately deny the right that is the cornerstone of our Constitution--the right of conscience.

With the consent of the parties indicated in letters being lodged with the Clerk, amici respectfully submit this brief to advance their position to this Court.

QUESTIONS PRESENTED

1. Whether First Amendment principles of freedom of conscience and religious liberty require adherence to Roe v. Wade and the invalidation of abortion restrictions designed to sponsor and impose a particular belief regarding the morality of abortion.

2. Whether the standard of strict scrutiny applied in Roe v. Wade and Akron v. Akron Center for Reproductive Health must be applied here to fulfill this Court's duty under Article III and the Bill of Rights to guard fundamental rights against legislative infringement.

SUMMARY OF ARGUMENT

Since Roe v. Wade, the nature and scope of individual constitutional rights at stake in the abortion context have never been questioned more explicitly or pointedly than in these cases.

The United States Department of Justice has submitted an amicus brief in which it urges the Court to repudiate the Roe v. Wade decision. The Solicitor General asserts that the Court should retract its acknowledgement, in Roe v. Wade, of the constitutional status of individual freedoms implicated in the abortion decision, or at least dilute its standard of review and defer to the legislature with respect to a fundamental right in controversy. This contention advocates a shocking and dangerous departure from the principle which is the cornerstone of our constitutional scheme, that it is the "province and duty of the judicial department

to say what the law is," Marbury v. Madison, 5 U.S. (1 Cranch), 137, 176 (1803), and to protect the rights of the individual against majoritarian disapproval and excess.

In defense of the challenged statutes, the Solicitor General contests the constitutional command at the heart of Roe v. Wade--that civil government must remain ideologically neutral with respect to the inseparable questions of the "morality" of abortion and "when life begins." The Solicitor General's argument highlights, just as the particular statutes before the Court illustrate, the impermissibility of abortion restrictions under the First Amendment. It also underscores that the decision in Roe v. Wade, which denied to civil authority the power to adopt a "theory of life," was compelled not only by the Fourteenth but also by the First Amendment.

The First Amendment's shelter for the

realm of intellect and spirit denies to the state the power to require individuals to espouse or to listen to beliefs they do not hold. The First Amendment likewise protects against being induced or forced to act according to morally offensive beliefs. By requiring espousal of, and seeking to induce conformity to, the belief that human life begins at conception, the statutes violate the First Amendment.

Moreover, because the controversy over abortion involves competing moral viewpoints rooted, for the most part, in theological differences, statutes, such as those at issue here, which fall outside the ambit of neutral, judgment-free abortion regulations delineated in Roe v. Wade, violate the First Amendment guarantee of religious liberty.

These statutes interfere ideologically and practically with a woman's right to freely exercise her religion and conscience

in making the abortion decision, while placing no similar obstacles in the path of the woman whose faith compels childbirth. Views regarding the "morality" of abortion and the correlative question of whether human life begins at conception stem from deeply-held conscientious principles which intrinsically are, or represent the functional equivalent of, theological beliefs. State-sponsorship of any one viewpoint departs from the rigorous governmental neutrality required where competing religious and conscientious claims are at stake.

ARGUMENT

I. ADHERENCE TO ROE V. WADE IS NECESSARY TO PRESERVE FIRST AMENDMENT PRINCIPLES OF FREEDOM OF CONSCIENCE AND RELIGIOUS LIBERTY.

At the heart of the statutes at issue are several provisions which evidence an underlying purpose to advance the theory that actual life begins at conception, or at some point prior to birth. These provisions underscore the unconstitutionality of the remaining sections invalidated by the courts below, which advance this theory by impermissibly placing a higher value on the fetus than on the needs of the pregnant woman. They also bring into sharp focus the First Amendment underpinnings of this Court's refusal to allow civil government to adopt "a theory of life" to override a woman's right to abortion. Akron v. Akron Center for Reproductive Rights, 462 U.S. 416, 444 (1983); Roe v. Wade, 410 U.S. 113, 162 (1973).

The premises and purposes of the 1982 Pennsylvania Abortion Control Act (18 Pa. Cons. Stat. Ann. §§3201-3220) (Purdon 1983) are set forth in unequivocal terms at the outset. It is based on a legislative intent to "to protect the life and health of the child subject to abortion," and the conclusion that because "the Commonwealth places a supreme value upon protecting human life," it is necessary to impose upon physicians "precise standards of care where their actions do or may result in the death of an unborn child" (emphases added). §3202.

The Pennsylvania Act requires the doctor to tell a woman seeking abortion "that there may be detrimental physical and psychological effects [of abortion] which are not accurately foreseeable," §3205(a)(1)(iii) and the gestational age of the "unborn child" at the time the abortion is to be performed. §3205(a)(1)(iv). The doctor is required to

advise her of the possible availability of medical assistance benefits for "prenatal care, childbirth and neonatal care," §3205(a)(2)(i), and "[t]he fact that the father is liable to assist in the support of her child, even in instances where the father has offered to pay for the abortion." §3205(a)(2)(ii). The doctor must also refer the woman to certain materials published by the state which contain, among other things, information regarding agencies and services available to assist her with pregnancy, childbirth and adoption, a statement that "[t]he Commonwealth of Pennsylvania strongly urges you to contact [these agencies] before making a final decision about abortion," and information regarding "the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full-term, including any relevant information on the

possibility of the unborn child's survival." §3205(a)(2)(iii), §3208.

Finally, the Pennsylvania Act requires the doctor, in performing post-viability abortions, to utilize the method of abortion most likely to result in a live birth unless the procedure would create a "significantly greater medical risk" to the woman. §3210(b). As the Third Circuit found, this section requires "the woman to bear an increased medical risk in order to save her viable fetus...," and requires the doctor "to make a 'trade-off' between the woman's health and fetal survival." American College of Obstetricians and Gynecologists v. Thornburgh, 737 F.2d 283, 300 (3rd Cir. 1984). At the same time, the statute eliminates certain mental health concerns from the consideration of whether a woman's health is jeopardized by choosing a method of

abortion designed to save the fetus.[2]

The Illinois Abortion Law similarly contains provisions which reflect the state's purpose of advancing the theory that life begins at conception. For example, section 11(d) requires doctors under all circumstances to inform women of the fact that a prescribed drug, such as a form of birth control, acts as an "abortifacient," which is defined in section 2(10) as any substance or device known to cause "fetal death." Ill. Rev. Stat. Ch. 38, ¶¶81-22(10), 81-31(d)(1983). In carrying out the state's theory of the primacy of prenatal life over women's well-being, another provision requires doctors to observe the same standard of care in aborting a "possibly viable" fetus as would be required when attempting to bring

2. Section 3210(b) provides, in part, that "[t]he potential psychological or emotional impact on the mother of the unborn child's survival shall not be deemed a medical risk to the mother."

a truly viable fetus to live births §6(4). Ill. Rev. Stat. Ch. 38, ¶81-26(4) (1983).

The portions of the Pennsylvania and Illinois statutes which propagandize the belief in the primacy of the fetus and the immorality of abortion, and which require individuals to express, listen to and act in accordance with that view, illuminate the meaning and wisdom of the decision in Roe v. Wade, 410 U.S. 113 (1973).

A. The Framework Established in Roe v. Wade Enforces The First Amendment Prohibition of State Sponsorship of Belief in Derogation of Individual Freedom of Conscience.

In Roe v. Wade, this Court emphasized the theological and metaphysical nature of the underlying question of when life begins:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in

> a position to speculate as to the answer.

410 U.S. at 159. The absolute refusal to allow the state to "adopt a theory of life" to override a woman's right to abortion, or to regard its interest in potential life as overriding its interest in the well-being of pregnant women, was an affirmation of the individual's freedom to believe and to follow one's beliefs as well as of the absence of power in the state to sponsor a contrary civil or religious faith.

The Court in Roe v. Wade outlined the full extent to which legitimate state concerns justify government regulation of abortion. That decision correctly isolated the only neutral, judgment-free bases of regulation. It recognized that, under our secular system of government, the state's obligation to respect and preserve the life and health of women will, under all

circumstances, outweigh any interest the state has in the potentiality of life presented by the fetus. The Court precluded the state from altering this constitutionally-based hierarchy of governmental priorities. Conversely, it required civil government to follow a hands-off approach with respect to the value-laden issues of the morality of abortion and the question of "when life begins," and relegated such issues to the conscience of the individual.

The question of whether abortion is right or wrong for a particular woman under particular circumstances is a matter which involves competing claims based on divergent moral beliefs as to which the First Amendment's guarantee of freedom of conscience prohibits the state from taking sides. Virulent public debate over the correct set of absolute principles defining

the value to be ascribed to prenatal life and the circumstances under which abortion is right or wrong does not in any way suggest that the individual's conscientious decision deserves a lesser degree of constitutional protection. To the contrary, the controversy confirms the value and propriety of affording that very form of protection. As the Court recognized in West Virginia State Board of Education v. Barnette:

> Struggles to coerce uniformity of sentiment in support of some end thought essential to their time have been waged by many good as well as evil men...Those who begin the coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of the opinion achieves only the unanimity of the graveyard.
>
> [F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. If there

> is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.

319 U.S. 624, 641-42 (1943), quoted in Wallace v. Jaffree, __ U.S. __, 86 L.Ed. 2d 29, 41 n.39 (1985).

As the statutes before the Court in these cases demonstrate, the effort to control abortion is part of a new "struggle to coerce uniformity" and dictate the bounds of permissible thought, belief, expression and action. Both the Pennsylvania and Illinois statutes contain provisions purporting to insure "informed consent," yet which require the doctor to give, and the woman to hear, particular information which supports, in blatant and subtle ways, the underlying legislative contention that abortion is immoral.

While a doctor cannot complain of being required to give the objective information necessary to ensure informed consent, Akron v. Akron Center for Reproductive Health, 462 U.S. at 442-444, Planned Parenthood v. Danforth, 428 U.S. 52, 68 (1976), this ordinance converts the legitimate process of informed consent into both a "straight-jacket"[3] and a propaganda tool for the position that abortion is immoral. As such, it violates not only the right to decide free of state interference, but also the First Amendment right not to be coerced to speak or listen.

It is axiomatic that the state cannot, consistent with the First Amendment, use its citizens to propagandize certain beliefs. As the Court recently noted, "the right to speak and the right to refrain from speaking are

3. Planned Parenthood v. Danforth, 428 U.S. at 68 n. 8.

complementary components of a broader concept of freedom of mind...." Wallace v. Jaffree, 86 L.Ed. 2d at 40. Similarly, in Wooley v. Maynard, the Court held that freedom of thought protects the right of individuals not to bear an ideological message which they find "morally objectionable." 430 U.S. 705, 715 (1977). See also, Elrod v. Burns, 427 U.S. 347 (1976) (Public employment cannot generally be conditioned on affiliation with a particular political party). This form of governmental compulsion "transcends constitutional limitations on [government's] power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control." West Virginia State Board of Education v. Barnette, 319 U.S. at 642.

Moreover, certain sections require the doctor to communicate or refer the patient to

information he or she does not believe to be truthful, let alone objective in nature. While there is no case on point in the annals of this Court, the freedom of thought and expression shielded by the First Amendment must surely extend protection against state-enforced compulsion to lie or mislead. See Torasco v. Watkins, 367 U.S. 488, 494 (1961) (First Amendment prohibits limiting public office to those who have or profess belief in certain religious concepts).

The First Amendment rights of pregnant women are also violated by this mandated consent process. Just as the First Amendment guarantees a right to listen and receive information, see e.g., Stanley v. Georgia, 394 U.S. 557, 564 (1964) (right to read obscenity in one's house); it also guarantees its counterpart--the right not to be forced to listen. Cf. Wallace v. Jaffree, 86 L.Ed. 2d at 40 (First Amendment protects certain

conduct and guarantees the corollary rights to refrain from those activities as part of a "broader concept of individual freedom of mind"); Griswold v. Connecticut, 381 U.S. 479, 482-84 (1965) (penumbras of First Amendment include many rights not specifically articulated).

The Constitution has been held to intervene to protect against forced listening where the invasion of privacy and the captivity of the audience is far less severe than it is under statutes regulating the doctor-patient relationship. See e.g. Federal Communications Commission v. Pacifica, 438 U.S. 726 (1978) (regulation of "offensive" material on radio); Kovacs v. Cooper, 336 U.S. 77 (1949) (ordinance regulating sound trucks). Making the doctor a mouthpiece of the state, the sanctity of a woman's decision-making process is invaded. Unlike the radio listener who can decide not

to listen to a particular channel, the pregnant woman cannot refuse the information or affect the doctor's obligation to give it to her unless she sacrifices her right to abortion.

There is little more offensive to the notion of a free people than compulsion to speak or to hear morally objectionable and one-sided messages, or efforts by the state to enforce uniformity of belief. Despite the efforts of those opposed to abortion to create the appearance of a resolution of the deep underlying conflict over the value to be ascribed to prenatal life, it is clear that the conflict rages unabated.[4] It remains an

4. See, The Human Life Bill: Hearings on S. 158 Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 97th Cong., 1st Sess. (1981), The Human Life Bill-Appendix: Hearings on S. 158 Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 97th Cong., 1st Sess., and (fn. cont. on next page).

irresoluble conflict between different conceptions of the meaning and sanctity of life, rooted in differing religious, moral, ethical teachings. The principle enunciated by this Court in Roe v. Wade--that the state may adopt no "theory of life" either to coerce or induce conformity--is the only one consistent with the First Amendment and the preservation of the pluralistic society which it envisioned.

B. Roe v. Wade Advances the Policies of Voluntarism and State Neutrality in Matters of Religion Embedded in the Religious Liberty Guarantees.

The statutes at issue here reflect the type of double-barrelled violation of the First Amendment which Roe v. Wade is designed effectively to avoid. Not only do they

(fn. cont. from preceding page)
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invade the realm of individual conscience by professing a "theory of life" intended to induce women to forgo abortion, they also advance a "theory of life" which is inconsistent with religious and conscientious decisions themselves protected by the religious liberty clauses. By tacitly encouraging adherence to a particular belief, the statutes offend both the principle of voluntarism and the mandate of governmental neutrality embodied in the Free Exercise and Establishment Clauses.

1. The Challenged Statutes Demonstrate that Roe v. Wade is Necessary to Avoid Infringement of the Individual Right to Make and Effectuate a Conscientious Decision on Abortion Protected by the Religious Liberty Clauses.

Abortion ranks as a paramount concern in all major religious traditions. For those of the anti-abortion faiths, actual human life begins at or near conception and abortion is

a grave sin, which destroys God's creation and is analagous to murder. Conversely, in the pro-choice faiths, the preservation of the health and well-being of existing life, and consideration of the responsibilities of parenthood outweigh the interest in potential life and rank among the highest obligations of human beings towards one another and toward God.

The Free Exercise Clause protects the right to believe or disbelieve. Torasco v. Watkins, 367 U.S. 488 (1961). It protects the right to practice one's beliefs, and to act in accordance with them. McDaniel v. Paty, 435 U.S. 618 (1978). It encompasses decisions about daily life which are "rooted in religious belief" rather than personal preference. Wisconsin v. Yoder, 406 U.S. 205, 215-16 (1972).

The religious liberty guarantee also shields the exercise of conscience:

decisions that reflect "religious choice" even though not compelled by religious dogma, Thomas v. Review Bd., 450 U.S. 707, 715-716 (1981), and decisions which are based on a "belief that occupies in the life of its possessor a place parallel to that filled by the orthodox belief in God." United States v. Seeger, 380 U.S. 163, 176 (1965).[5] The

5. Though Seeger involved statutory interpretation of the conscientious objector exemption rather than a constitutional holding, the expansive interpretation was influenced by the concern for avoiding preferential treatment of the traditional believer as compared to the non-traditional one. United States v. Seeger, 380 U.S. at 176; Welsh v. United States, 398 U.S. 333 (1970) (Harlan, J., concurring). In Gillette v. United States, 401 U.S. 437 (1971), the selective objector claim, found to be outside the statutory exemption, nonetheless triggered scrutiny under both the Free Exercise and Establishment Clauses.

— Court recently restated this longstanding principle in Wallace v. Jaffree:

> the individual's freedom to choose his [her] own creed is the counterpart of his [her] right to refrain from accepting the creed established by the majority. At one time it was thought that this right merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Mohammedism or Judaism. But when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all. This conclusion derives support not only from the interest in respecting the individual's freedom of conscience,

> but also from the conviction that religious beliefs worthy of respect are the product of free and voluntary choice by the faithful (footnotes omitted).

86 L.Ed. 2d at 40-41. See also Thornton v. Caldor, ___U.S.___, 86 L. Ed. 2d 557, 564 (1985) (O'Connor, Marshall, J.J., concurring) (invalidating a statute protecting Sabbath observers "without according similar accommodation to ethical and religious beliefs and practices of other private employees.")

Rooted in a policy of voluntarism in matters of religion and conscience, the Free Exercise Clause protects against direct and indirect schemes to discourage religious exercise. A state invades the realm of freedom of religion if it purposefully, or

even inadvertently, conditions benefits or exacts a toll that puts "substantial pressure on an adherent to modify his [her] behavior and to violate his [her] belief." Thomas v. Review Board, 450 U.S. at 718; Sherbert v. Verner, 374 U.S. 398, 404-07 (1963). Therefore, content-based, judgmental legislative intervention impinging on the religious and conscientious abortion decision-making process violates the policy of voluntariness underlying the religious liberty guarantees, as well as the right to privacy.

By requiring doctors to give out, and women to hear, information reflecting a theory of life that renders abortion immoral clearly invades the shield afforded by the Free Exercise Clause to the integrity of differing religious and conscientious

beliefs. The information required to be provided under the challenged statutes is designed to advance the view that the fetus is a person from the moment of conception and cause the woman to question her own beliefs and reconsider her decision to have an abortion or to utilize a particular form of birth control.[6] Other constraints on the informed consent process, such as the giving of false, misleading, erroneous and distorted information as to risks and benefits, or the availability of adoption or other

6. The fact that the materials prepared by the State of Pennsylvania might be supplemented or contested in the hands of a particular doctor does not eliminate their coercive element; nor does it obviate the "substantial risk" that the materials will be used as a tool of "state-sponsored indoctrination" in the hands of another doctor. Grand Rapids School District v. Ball, __U.S.__, 87 L.Ed. 2d 267, 279 (1985). "Such indoctrination, if permitted to occur, would have devastating effects on the right of each individual to determine what to believe (and what not to believe) free of any coercive pressures from the State." Id. at 278. Cf. Levitt v. Committee for Public

(fn. cont. on next page)

services--are designed to induce a woman to renounce abortion or, at the least, to impugn her decision-making process.

The informational requirement regarding "abortifacients" contained in the Illinois statute constitutes a particularly offensive type of moralistic preaching in violation of the constitutional guarantee of religious liberty. In the absence of secular, much less compelling, justification, it intrudes on the decision-making process, and burdens access to the means to effectuate a procreational decision regarding birth control and abortion, in a way which goes

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(fn. cont. from preceding page)
Education, 413 U.S. 472, 480 (1973)("[T]he State is constitutionally compelled to assure that the state-sponsored activity is not being used for religious indoctriniation"); Lemon v. Kurtzman, 403 U.S. 602, 619 (1971)("The State must be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion").

beyond infringing the Free Exercise right to put one's religious and conscientious choices into practice. For example, its impact upon a woman whose religious teachings oppose abortion but who, after considerable soul-searching, has arrived at an individual, conscientious decision to choose an early abortion, or to use a curative drug or a particular form of birth control, poses a unique offense to the Free Exercise Clause. The freedom to follow the dictates of one's conscience in deciding not to follow the dogmatic teachings of one's faith, and to do so without feelings of shame or guilt inflicted by the state, is the complementary component of the constitutional guarantee of free exercise. See Thomas v. Review Board, 450 U.S. at 715-716 ("the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect."); Wallace v. Jaffree, 86 L. Ed. 2d at

40.

The Illinois requirement regarding "abortifacients" also demonstrates the way in which women are invidiously affected by restrictions aimed at promoting a particular "theory of life" which restrict the doctor's freedom of conscience regarding matters of ethics and medicine. A woman is entitled to rely on the doctor to provide her with information she requests, and to decide, on the basis of his or her best medical judgment and in light of his or her intimate knowledge of the physical and emotional needs and beliefs of the patient, what other information can or should be disclosed.

The "method of choice" provision of the Pennsylvania statute presents an even greater affront to the constitutionally-mandated respect for the freedom of conscience of both the doctor and the patient. The woman's conscientious decision to have an abortion

is, for all practical purposes, overriden. Not only is she forced to bear a "medical risk" to preserve the fetus, but extreme mental anguish she may suffer over the prospect of a "live birth"--which may itself have served as the basis for her religious and medical decision to abort--is not considered.[7] Moreover, requiring a doctor to knowingly inflict upon his or her patient an increased health risk to preserve the fetus will undoubtedly trample the religious and conscientious, as well as the medical, convictions of countless doctors.

This lack of respect for the conscientious beliefs of doctors concerned

7. This provision thus comes into direct conflict with what is often a medically and religiously mandated decision. For example, Jewish law is interpreted by many to include the pregnant woman's extreme mental anguish (regardless of its specific source) carrying with it suicidal tendencies within the category of life-threatening situations in which abortion is required. Feldman, Marital Relations, Birth Control and Jewish Law 284-286 (1974).

with the well-being of their female patients is in sharp contrast with the Pennsylvania statute's treatment of doctors whose personal beliefs coincide with those of the state. Indeed, the discrimination accomplished by the statute is not at all inadvertent; it is explicit in the statutory scheme. Doctors who are opposed to abortion are protected against being required to participate in abortion under the statute itself.[8] By contrast to this respect for conscientious convictions of those opposed to abortion, the statutes require pro-choice doctors to participate in informed consent processes and

8. Section 3202(d) of the Pennsylvania statute provides:

Right of conscience--It is the further public policy of the Commonwealth of Pennsylvania to respect and protect the right of conscience of all persons who refuse to obtain, receive, subsidize, accept or provide abortions including those persons who are engaged in the delivery of medical services and medical care whether acting individually, corporately or in association with other

(fn. cont. on next page)

medical practices which violate their conscientious beliefs as well as their ethical and professional commitments.

2. The Challenged Statutes Demonstrate That Roe v. Wade is Necessary to Enforce the Obligation of State Neutrality Commanded by the Religious Clauses.

As Roe v. Wade recognized, statutes which burden women and their doctors in rendering and effectuating the abortion decision as a matter of conscience, violate the obligation of state neutrality on matters of conscience and religion. These cases once again invoke the "constitutionally imposed 'governmental obligation of neutrality' originating in the establishment and free

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(fn. cont. from preceding page)
persons; and to prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability or financial burden upon such persons or entities by reason of their refusing to act contrary to their conscience or conscientious convictions in refusing to obtain, receive, subsidize, accept or provide abortions.

exercise clauses of the First Amendment." Maher v. Roe, 432 U.S. 464, 474, n. 8 (1977), quoting Sherbert v. Verner, 374 U.S. at 409.

Neutrality as between differing religious and non-religious views and practices is a core principle of the First Amendment. It has long been settled that "a state can[not], consistent with the First Amendment, pass laws which...prefer one religion over another," Everson v. Board of Education, 330 U.S. 1, 15 (1947), and that a proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion." Committee for Public Education v. Nyquist, 413 U.S. 756, 792-793 (1973), quoted in Wallace v. Jaffree, 86 L. Ed. 2d at 46 n.50.

The requirement of neutrality is strict where the free exercise of religion is at

issue. See Walz v. Tax Commission, 397 U.S. 664 (1970). The Free Exercise Clause "prohibits misuse of secular governmental programs 'to impede the observance of one or more religions or to discriminate invidiously between religions...even though the burden may be characterized as being only indirect.' Braunfeld v. Brown, 366 U.S. 599 (1961) at 607." Gillette v. United States, 401 U.S. at 462. Thus Sherbert not only held that the absolute Saturday work requirement for unemployment compensation eligibility was an impermissible burden on free exercise of a sabbatarian; it also held that the "unconstitutionality of the disqualification of the Sabbatarian...[is] compounded by...religious discrimination" in that, by contrast to the treatment of the sabbatarian, the emergency labor laws exempted those who were "conscientiously opposed to Sunday work." 374 U.S. at 406.

When recently confronted with the question at issue in Sherbert from the opposite constitutional perspective, the Court reiterated the importance of state neutrality in light of the guarantee of religious liberty. In Thornton v. Caldor, Inc., the Court invalidated a statute which granted Sabbath observers an absolute right to a day off in part because it gave no rights or consideration to "[o]ther employees who have strong and legitimate, but nonreligious reasons for wanting a weekend day off." Thornton v. Caldor, Inc., ___U.S.___, 86 L. Ed. 2d 557, 563 n. 9 (1985). As the concurring Justices noted, the statute improperly granted special protection for Sabbath observers, "without according similar accommodation to ethical and religious beliefs and practices of other private employees," thereby conveying a message "of the endorsement of a particular

belief, to the detriment of those who do not share it." Id. at 564 (O'Connor, and Marshall J. J., concurring).

The overall discriminatory character of the statutes at issue is clear. Women who, out of religious or conscientious conviction, determine that abortion or a particular drug or form of birth control, is proper, are subjected to a program of discouragement and deterrence, while women who for similar reasons are compelled to or opt to bear a child suffer no such hindrance in the effectuation of their religious choice. Those who choose abortion are being burdened, not to advance their health or some independent, secular, and neutral purpose, but for the purpose of inducing them to consider and obey the belief that life begins at conception and abortion is immoral.

Equal treatment of both the woman whose conscience dictates abortion rather than

childbirth and the doctor who assists her requires that these one-sided statutes be invalidated. See also United States v. Seeger, 380 U.S. 163 (1965); Welsh v. United States, 398 U.S. 333 (1970). The lack of compelling let alone colorable interest for these statutes is thus highlighted by the religious discrimination it effects.

Far from advancing maternal health or an objectively informed decision, the goal of the statutes is to convert, or at least shame, women whose conscience dictates abortion, or the use of an "abortifacient," contary to the states' moral and religious positions that abortion is the taking of human life.

This Court has repeatedly held in First Amendment cases that mere disagreement with the content of belief or protected action does not suffice to justify infringement. See e.g., Fowler v. Rhode Island, 345 U.S.

67, 69-70 (1953); Niemotko v. Maryland, 340 U.S. 268, 272-73 (1951); Ballard v. United States, 322 U.S. 78 (1944); Murdock v. Pennsylvania, 319 U.S. 105, 116 (1943); Only where the free exercise of religion would pose a "substantial threat to public safety, peace and order," Sherbert v. Verner, 374 U.S. at 403, can the state counterpose its moral view against that of the believer. See e.g., Prince v. Massachusetts, 321 U.S. 158 (1944); Jacobson v. Massachusetts, 197 U.S. 11 (1905).

If this were not so, then the protection afforded by the religious liberty guarantee of the Constitution would be swallowed up by the moral disapproval that particular beliefs and practices often inspire. Since the women burdened by these statutes seek to obtain a perfectly legal service, the moral position adopted by the states cannot itself satisfy the compelling interest test, let alone

qualify as legitimate in this context.

Moreover, the fact that the state legislatures have taken a position that deprecates a moral decision sacred to dissenting faiths threatens the dangers of intolerance, oppression and sectarian strife that the Religion Clauses were designed to avert. Wallace v. Jaffree, ___U.S.___, 86 L. Ed. 2d 29 (1985); Everson v. Board of Education, 330 U.S. 1, 15-16, 53-55 (Rutledge, J. dissenting). Where as here, an issue is perceived as religious by many, and particularly by dissenting faiths, state sponsorship sacrifices the neutrality necessary to the preservation of religious harmony and the public peace. People ex rel. McCollum, 333 U.S. 203, 228 n. 19 (1948); cf. Grand Rapids School District v. Ball, 87 L. Ed. 2d at 276, 281. James Madison remonstrated that against any state support for religious belief, even purportedly even-handed support:

> Because, it will destroy that moderation and harmony which the forebearance of our laws to intermeddle with Religion, has produced among its several sects. Torrents of blood have been spilt in the old world, by vain attempt of the secular arm to extinguish Religious discord, by proscribing all difference in Religious opinions...If...we begin to contract the bonds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken of the first fruit of the threatened innovation.

"Memorial and Remonstrance," reprinted in Everson v. Board of Education, 330 U.S. at 69 (Appendix to Rutledge, J. dissenting).

Madison's warning sounds far too contemporary. The effort reflected in the statutes before this Court to advance the belief that life begins at conception, to stop, disparage and discourage abortion and to elevate concern for prenatal life over concern for the rights and needs of pregnant women is part of a program pressed by a new and dangerous religious movement to undo the

separation of church and state guaranteed by the First Amendment. The decision in Roe v. Wade exemplifies the fact that this Court is the ultimate refuge for the freedom of conscience that the principles of religious liberty preserve.

II. THIS COURT IS DUTY-BOUND TO GIVE STRICT SCRUTINY TO STATUTES THAT IMPINGE THE EXERCISE OF FUNDAMENTAL RIGHTS.

The Solicitor General of the United States has filed a brief in these cases which suggests a radical and dangerous departure from our constitutional scheme. The Solicitor's argument that the Court should altogether reverse the constitutional holding of Roe v. Wade or, at a minimum, dilute the constitutional standard for reviewing restrictions on abortion, are both based on his contention that legislatures on every level, and not the Court, should determine what rights are fundamental and the extent to which they will be protected. Essentially, the Solicitor is calling for this Court to abdicate its constitutional function as guardian of individual and civil rights.

Similar arguments have been heard in this Nation during periods when

constitutional rights were under attack. One of the most eloquent responses to the argument for legislative deference was made by Justice Jackson, in a case which is, at its heart, very similar to this one:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.

West Virginia State Board of Education v. Barnette, 319 U.S. at 638.

To the argument that the Court lacked competence to protect fundamental rights in the face of competing policy considerations, he replied:

> ...[W]e act in these matters not by authority of our competence but by force of our commissions. We cannot because of our modest

> estimates of our competence in such specialties as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed.

Id. at 639-40.

The contention that the Court should defer to the legislatures on a matter of fundamental rights threatens every guarantee of the Bill of Rights. All constitutional rights, whether explicit or implicit, are necessarily defined and shaped by this Court's interpretation of constitutional principle. This includes rights so fundamental as the right to be free of racial segregation, Brown v. Board of Education, 347 U.S. 483 (1954), or of state sponsorship of religious exercises in the schools, Wallace v. Jaffree, 86 L. Ed. 2d 29 (1985); Engel v. Vitale, 370 U.S. 421 (1962). With each one of these decisions and with countless others the Court has faced and survived powerful

pressures from political movements opposed to the Constitution's guarantee of these fundamental rights.[9]

The right to privacy which embraces the right to abortion is not, as the Solicitor suggests less deserving of this Court's rigorous protection because it is implicit in the Bill of Rights. It is, in fact, the foundation of human capacity to exercise all the rights guaranteed in a democracy. As Justice Brandeis wrote:

> The makers of our constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and his intellect. They knew that only a

9. For example, in response to Brown v. Board of Education, its opponents sought to withdraw Supreme Court and lower federal court jurisdiction from school desegregation cases. See, e.g. H.R. 1228, 85th Cong., 1st Sess. (1957), and S. 3467, 85th Cong., 2d Sess. (1958). Likewise, after the decision in Swann v. Charlotte Mecklenberg Board of Education, 402 U.S. 1 (1971), opposition was marshalled in the form of both constitutional (fn. cont. on next page)

> part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone--the most comprehensive of rights and the right most valued by civilized man.

(fn. cont. from preceding page) amendments, see, e.g. H.J. Res. 1035, 92d Cong., 2d Sess. (1972), S.J. Res. 165, 92d Cong., 1st Sess. (1971), H.J. Res. 30, 823, 856, 858, 92d Cong., 1st Sess. (1971); and bills, which received the backing of the Nixon Administration, see H.R. 13915, 13916 92d Cong., 2d Sess. (1972). In the area of school prayer, efforts to circumvent the impact of this Court's decisions in Engel v. Vitale, 370 U.S. 421 (1961) and School District of Abington v. Schemp, 374 U.S. 203 (1963) have included numerous constitutional amendments. See, e.g. the Becker Amendment (1964), the Dirksen amendments (1966, 1967), and the Wylie amendment (H.J. Res. 191, 1971).

Similarly, this Court's decisions in the areas of reapportionment and citizen protection from legislative investigation, have been opposed by legislative attempts to limit the Court's jurisdiction. See Eisenberg, "Congressional Authority to Restrict Lower Federal Court Jurisdiction," 83 Yale Law Journal 498 (1974).

Olmstead v. United States, 277 U.S. 438, 487 (1928) (Brandeis, J., dissenting).

Periodically, this nation and our Constitution are threatened by religious and ideological forces which seek safety in conformity and efficacy through coercion. In such times as these, when legislatures are under extreme pressure to undo the Bill of Rights, the Court, as the ultimate guardian of the liberties fundamental to a democracy, is inevitably under attack as well. But the integrity of the Court, the survival of our constitutional system, and the guarantee of individual liberty are preserved, not by acquiescence to these pressures, but by solemn and unswerving fulfillment of the duty conferred upon this Court by the written Constitution.

In sum, the Solicitor challenges the most fundamental principle of the constitutional scheme of checks and

balances--that it is "the province and duty of the judicial department to say what the law is," to declare that "an act of the legislature, repugnant to the constitution is void," and to guarantee that when rights are violated, the "individual has a right to resort to the laws of his country for a remedy." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176, 166 (1803). This Court has no higher office under the Constitution than to protect individual rights under challenge.

Under any standard of review under the Fourteenth Amendment, the statutes before the Court in these cases must be invalidated. But the protection of the right to abortion, like that of all fundamental constitutional rights, properly calls for undiluted application of strict judicial scrutiny.

CONCLUSION

The liberty of conscience, guaranteed by the First Amendment's prohibition on state sponsorship or imposition of any belief, let alone religious belief--these are cornerstones of our pluralistic democratic society. The battle raging over abortion is not a battle between good and evil, as some may see it, but is rather a battle between differing conceptions of the good. Each conception is grounded in profound religious, moral and ethical principles, and each is equally incomprehensible and offensive to those who believe otherwise.

This Court's decision in Roe v. Wade charts the only course acceptable under our Constitution--refusing to government the power to adopt a "theory of life," and guaranteeing to women a sphere of untrammeled privacy for the exercise and effectuation of their own, differing conscientious

convictions. Any departure from the principles of Roe v. Wade threatens not only the right to abortion, but the foundation of individual freedom under the Constitution. As James Madison said: "[I]t is proper to take alarm at the first experiment on our liberties..." "Memorial and Remonstrance" in Everson v. Board of Education, 330 U.S. at 65-66 (Appendix to Opinion of Rutledge, J., dissenting).

WHEREFORE, the challenged statutes should be invalidated.

Respectfully submitted,

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APPENDIX

APPENDIX A

RELIGIOUS COALITION FOR ABORTION RIGHTS (1979)

Statement of Purpose: The Religious Coalition for Abortion Rights is an organization of national religious bodies which, on the basis of faith and moral conviction and in the light of constitutional guarantees of privacy and religious freedom, seeks to encourage and coordinate support for safeguarding the legal option of abortion; for ensuring the right of individuals to make decisions concerning abortion in accordance with their consciences and responsible medical practice; and for opposing efforts to deny these right through constitutional amendment, or federal and state legislation.

Rationale: Many religious organizations representing diverse denominations have adopted the position that decisions concerning abortion would be made according

to individual conscience, consistent with responsible medical practice, free from the threat of criminal penalty...

However, a vocal minority would deny the option of legal abortion to all. Their personal belief that human life exists from the moment of conception has prompted their efforts to nullify the Supreme Court decision through a Constitutional amendment which would restrict access to abortion. One theological view would thus become law, binding on Americans of all faiths.

It is vital to increase public awareness of this danger. Enactment of such legislation would violate the religious freedom of every citizen by circumventing the First Amendment guarantee of church-state separation.

APPENDIX B

AMERICANS FOR RELIGIOUS LIBERTY (1982)

Statement of Principles: We believe in the American tradition of religious and intellectual freedom within a secular democratic state. We believe in the philosophy of Thomas Jefferson and James Madison which gave birth to this tradition. We believe in the American Constitution and the Bill of Rights which make it the law of the land.

A free and secular democratic state guarantees religious liberty. It guarantees equal freedom to the religious and the non-religions. It makes religious faith a private matter and gives no special privileges to any religion or idea or practice.

A free and secular democratic state secures personal freedom and privacy. It defends the individual against the tyranny of

transient majorities or determined minorities. It allows all people to follow their own consciences and restrains them only when they harm the public welfare. It makes abortion and sexual behavior between consenting adults issues of personal choice...

APPENDIX C

The following are excerpts from statements about abortion by national religious organizations:

AMERICAN BAPTIST CHURCHES, U.S.A. (General Board, 1981)

Public law, enacted by human reason and enforced by state power, can never fully express the moral sensitivity of Christian love. We are therefore grateful for the Constitutional protection of religious freedom which guarantees our right to make personal moral decisions based on religious

principles.

We recognize that Christian persons of sensitive and informed conscience find themselves on differing sides of the abortion issue. In our Baptist tradition the integrity of each person's conscience must be respected; therefore, we believe that abortion must be a matter of responsible, personal decision.

AMERICAN ETHICAL UNION
(1965, reaffirmed 1979)

Abridgement of individual civil and human liberties as guaranteed by the United States Constitution is a danger to all. Among those liberties that must continue free of threat is the right of every woman to self-determination insofar as continued pregnancy is concerned.

AMERICAN FRIENDS SERVICE COMMITTEE
(1970)

On religious, moral, and humanitarian grounds, therefore, we arrived at the view that it is far better to end an unwanted pregnancy than to encourage the evils resulting from forced pregnancy and childbirth. At the center of our position is a profound respect and reverence for human life, not only that of the potential human being who should never have been conceived, but that of the parent, the other children and the community of man.

Believing that abortion should be subject to the same regulations and safeguards as those governing other medical and surgical procedures, we urge the repeal of all laws limiting either the circumstances under which a woman may have an abortion or the physician's freedom to use his best professional judgment in performing it.

AMERICAN HUMANIST ASSOCIATION
(Annual Conference, 1977)

We affirm the moral right of women to become pregnant by choice and to become mothers by choice. We affirm the moral right of women to freely choose a termination of unwanted pregnancies. We oppose actions by individuals, organizations and governmental bodies that attempt to restrict and limit the women's moral right and obligation of responsible parenthood.

AMERICAN JEWISH CONGRESS
(Biennial Convention, 1982)

The American Jewish Congress has long recognized that reproductive freedom is a fundamental right, grounded in the most basic notions of personal privacy, individual integrity and religious liberty. Jewish religious traditions hold that a woman must be left to her own conscience and God to decide for herself what is morally correct. The fundamental right to privacy applies to

contraception to avoid unintended pregnancy as well as to freedom of choice on abortion to prevent an unwanted birth.

The American Jewish Congress, therefore,

--Reaffirms its unwavering support for the Supreme Court decisions, including Roe v. Wade and Doe v. Bolton, which recognize that the Constitution guarantees women freedom of choice with respect to abortion.

--Reaffirms its opposition to all efforts--whether through Constitutional amendment, simple legislative fiat, or attacks on the jurisdiction of the courts--that would restrict or burden a woman's right to choose to terminate a pregnancy.

--Rejects any efforts that would deny individual religious liberty to either clergy or lay people who, by virtue of their sincerely-held religious beliefs, may differ in interpreting when to attribute

"personhood" to prenatal life.

BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS
(1973)

It was voted that the Baptist Joint Committee on Public Affairs go on record as opposed to the Buckley-Hatfield amendment and any like or similar constitutional amendments, and that the staff be authorized to take all available action to oppose them.

B'NAI B'RITH WOMEN
(Biennial Convention, 1976,
reaffirmed, 1978)

We wholeheartedly support the concepts of individual freedom of conscience and choice in the matter of abortion. Any constitutional amendment prohibiting abortion would deny to the population at large their basic rights to follow their own teachings and attitudes on this subject which would threaten First Amendment rights.

CATHOLIC WOMEN FOR REPRODUCTIVE RIGHTS
(1985)

CWFRR joins people of other religious

traditions in respecting the pluralism of religious, moral and ethical views. Thus we support the Supreme Court decisions which promote First Amendment freedoms by leaving each woman free to follow her own moral and religious convictions about abortion.

CWFRR, with faithful Catholic theologians, married couples, sisters and many other individuals and groups, dissents from the position taken by the hierarchy of the Catholic Church that every abortion is morally wrong. CWFRR affirms that there are circumstances in which a woman's choice to have an abortion may be morally justifiable.

CWFRR thus opposes all legislation which would in any way restrict a woman's right to control her reproduction.

CATHOLICS FOR A FREE CHOICE
(1975)

We affirm the religious liberty of Catholic women and men and those of other religions to make decisions regarding their

own fertility free from church or governmental intervention in accordance with their own individual conscience.

CENTRAL CONFERENCE OF AMERICAN RABBIS
(Annual Convention, 1975)

We believe that in any decision whether or not to terminate a pregnancy, the individual family or woman must weigh the tradition as they struggle to formulate their own religious and moral criteria to reach their own personal decision. We believe that the proper focus for formulating these relgious and moral criteria and for making this decision must be the individual family or woman and not the state or other external agency.

As we would not impose the historic position of Jewish teaching upon individuals nor legislate as normative for society at large, so we would not wish the position of any other group imposed on the Jewish community or the general population.

We affirm the legal right of a family or a woman to determine on the basis of their or her own religious and moral values whether or not to terminate a particular pregnancy. We reject all constitutional amendments which would abridge or circumscribe this right.

CHRISTIAN CHURCH (DISCIPLES OF CHRIST)
(General Assembly, 1975)

WHEREAS, the Christian Church (Discpiles of Christ) has proclaimed that in Christ, God affirms freedom and responsibility for individuals, and

WHEREAS, legislation is being introduced into the U.S. Congress which would embody in law one particular opinion concerning the morality of abortion...

THEREFORE BE IT RESOLVED, that the General Assembly of the Christian Church (Disciples of Christ)

--Affirm the principle of individual liberty, freedom of individual conscience, and sacredness of life for all persons.

--Respect differences in religious beliefs concerning abortion and oppose, in accord with the principle of religious liberty, any attempt to legislate a specific religious opinion or belief concerning abortion upon all Americans.

EPISCOPAL CHURCH
(General Convention, 1982)

RESOLVED: That the Episcopal Church express its unequivocal opposition to any legislation on the part of the national or state governments which would abridge or deny the right of individuals to reach informed decisions in this matter and to act upon them.

EPISCOPAL WOMEN'S CAUCUS
(Annual Meeting, 1978)

We are deeply disturbed over the increasingly bitter and divisive battle being waged in legislative bodies to force continuance of unwanted pregnancies and to limit an American woman's right to abortion.

We believe that all should be free to exercise their own consciences on this matter and that where widely differing views are held by substantial sections of the American religious community, the particular belief of one religious body should not be forced on those who believe otherwise.

FEDERATION OF RECONSTRUCTIONIST CONGREGATIONS AND HAVUROT (1981)

Although the Jewish tradition regards children as a blessing, a gift of life itself, the tradition permits the abortion of an unborn child in order to safeguard the life and the physical and mental health of the mother. The rabbis did not take a consistent stand on the question of whether a fetus resembles "a person." They did not think it possible to arrive at a final theoretical answer to the question of abortion, for that would mean nothing less than to be able to define convincingly what

it means to be human.

We recognize that abortion is a tragic choice. Any prospective parent must make an agonizing decision between competing claims--the fetus, health, the need to support oneself and one's family, the need for time for a marriage to stabilize, responsibility for other children and the like. Some of us consider abortion to be immoral except under the most extraordinary circumstances. Yet we all empathize with the anguish of those who must make the decision to abort or not to abort.

LUTHERAN CHURCH IN AMERICA
(Biennial Convention, 1970,
reaffirmed 1978)

Since the fetus is the organic beginning of human life, the termination of its development is always a serious matter. Nevertheless, a qualitative distinction must be made between its claims and the rights of a responsible person made in God's image who

is in living relationships with God and other human beings. This understanding of responsible personhood is congruent with the historical Lutheran teaching and practice whereby only living persons are baptized.

On the basis of the evangelical ethic, a woman or couple may decide responsibly to seek an abortion. Earnest consideration should be given to the life and total health of the mother, her responsibilities to others in her family, the stage of development of the fetus, the economic and psychological stability of the home, the laws of the land, and the consequences for society as a whole.

MORAVIAN CHURCH IN AMERICA,
NORTHERN PROVINCE
(1974)

Whereas the Moravian Church believes in the sacredness of life and in the quality of life, and whereas we believe that abortion should not be used as a method of birth control nor a means of controlling

population, and whereas Christian faith calls us to affirm the freedom of persons as well as the sanctity of life, be it resolved that abortion should be a matter of responsible personal decision, with continuing counseling provided if desired.

NATIONAL COALITION OF AMERICAN NUNS
(1982)

For thirteen years, the National Coalition of American Nuns has debated the abortion issue.

While we continue to oppose abortion, in principle and in practice, we are likewise convinced that the responsibility for decisions in this regard resides primarily with those who are directly and personally involved.

NATIONAL COUNCIL OF JEWISH WOMEN
(National Convention, 1969,
reaffirmed, 1979, 1982)

The members of NCJW reaffirm the strong commitment "to work to protect every woman's individual right to choose abortion and to

eliminate any obstacles that would limit her reproductive freedom."

NATIONAL FEDERATION OF TEMPLE SISTERHOODS
(Biennial Assembly, 1975)

NFTS affirms our strong support for the right of a woman to obtain a legal abortion, under conditions now outlined in the 1973 decision of the United States Supreme Court. The Court's position established that during the first two trimesters, the private and personal decision of whether or not to continue to terminate an unwanted pregnancy should remain a matter of choice for the woman; she alone can exercise her ethical and religious judgment in this decision.

Only by vigorously supporting this individual right to choose can we also ensure that every woman may act according to the religious and ethical tenets to which she adheres.

NATIONAL SERVICE CONFERENCE,
AMERICAN ETHICAL UNION
(1976, reaffirmed 1979)

We believe in the right of each individual to exercise his or her conscience; every woman has a civil and human right to determine whether or not to continue her pregnancy. We support the decision of the United States Supreme Court of January 22, 1973 regarding abortion.

We believe that no religious belief should be legislated into the legal structure of our country; the state must be neutral in all matters related to religious concepts.

NORTH AMERICAN FEDERATION OF TEMPLE YOUTH
(1981)

BE IT RESOLVED: that NFTY continues to strongly support the right of a woman to choose to obtain a safe, legal abortion, and that NFTY opposes any constitutional amendment that could lead to the restriction of that right.

PIONEER WOMEN/NA'AMAT
(Biennial Convention, 1983)

Reproductive choice must be recognized as a matter of individual conscience outside the realm of government intrusion. We oppose attempts--whether by Constitutional amendment, legislation, judicial review or government regulation--to restrict women's access to safe and legal abortion, to bar financial assistance to women seeking abortion or to violate the confidentiality of family planning services.

PRESBYTERIAN CHURCH, U.S.A.
(General Assembly, 1983)

The church's position on public policy concerning abortion should reflect respect for other religious traditions and advocacy for full exercise of religious liberty. The Presbyterian Church exists within a very pluralistic environment. Its own members hold a variety of views. It is exactly this pluralism of beliefs which lead us to the

conviction that the decision regarding abortion must remain with the individual, to be made on the basis of conscience and personal religious principles, and free from governmental interference.

Consequently, we have a responsibility to work to maintain a public policy of elective abortion, regulated by the health code, not the criminal code. The legal right to have an abortion is a necessary prerequisite to the exercise of conscience in abortion decisions. Legally speaking, abortion should be a woman's right because, theologically speaking, making a decision about abortion is, above all, her responsibility.

As Presbyterians and U.S. citizens we have a responsibility to guarantee every woman the freedom of reproductive choice. We affirm the intent of existing law in the United States regarding abortion: protecting

the pregnant woman.

REFORMED CHURCH IN AMERICA
(General Synod, 1975)

To use, or not to use, legal abortion should be a carefully considered decision of all the persons involved, made prayerfully in the love of Jesus Christ.

Christians and the Christian community should play a supportive role for persons making a decision about or utilizing abortion.

REORGANIZED CHURCH OF JESUS CHRIST
OF LATTER DAY SAINTS
(1974, reaffirmed 1980)

We affirm that parenthood is partnership with God in the creative processes of the universe.

We affirm the necessity for parents to make responsible decisions regarding the conception and nurture of their children.

We affirm a profound regard for the personhood of the woman in her emotional, mental and physical health; we also affirm a

profound regard and concern for the potential of the unborn fetus.

We affirm the inadequacy of simplistic answers that regard all abortions as murder or, on the other hand, regard abortion only as a medical procedure without moral significance.

We affirm the right of the woman to make her own decision regarding the continuation or termination of problem pregnancies.

UNION OF AMERICAN HEBREW CONGREGATIONS
(Biennial Convention, 1975,
reaffirmed, 1981)

The UAHC reaffirms its strong support for the right of a woman to obtain a legal abortion on the constitutional grounds enunciated by the Supreme Court in its 1973 decision...This rule is a sound and enlightened position on this sensitive and difficult issue, and we express our confidence in the ability of the woman to exercise her ethical and religious judgment

in making her decision.

The Supreme Court held that the question of when life begins is a matter of religious belief and not medical or legal fact. While recognizing the right of religious groups whose beliefs differ from ours to follow the dictates of their faith in this matter, we vigorously oppose the attempts to legislate the particular beliefs of those groups into the law which governs us all. This is a clear violation of the First Amendment. Furthermore, it may undermine the development of interfaith activities. Mutual respect and tolerance must remain the foundation of interreligious relations.

UNITARIAN UNIVERSALIST ASSOCIATION
(General Assembly, 1978)

WHEREAS, religious freedom under the Bill of Rights is a cherished American right; and

WHEREAS, right to choice on contraception and abortion are important

aspects to the right of privacy, respect for human life and freedom of conscience of women and their families; and

WHEREAS, there is increasing religious and political pressure in the United States to deny the foregoing rights;

BE IT RESOLVED: That the 1978 General Assembly of the Unitarian Universalist Association once again affirms the 1973 decision of the Supreme Court of the United States on abortion and the member societies and individual members

BE IT FURTHER RESOLVED: That the 1978 General Assembly of the Unitarian Universalist Association strongly opposes any denial or restriction of federal funds, or any Constitutional amendment, or the calling of a national Constitutional Convention to propose a Constitutional amendment, that would prohibit or restrict access to legal abortion.

UNITARIAN UNIVERSALIST WOMEN'S FEDERATION
(Biennial Convention, 1975,
reaffirmed 1979, 1981)

The Unitarian Universalist Women's Federation reaffirm[s] the right of any woman of any age or marital or economic status to have an abortion at her own request upon consultation with her physician.

UNITED CHURCH OF CHRIST
(General Synod, 1981)

The question of when life [personhood] begins is basic to the abortion debate. It is primarily a theological question, on which denominations or religious groups must be permitted to establish and follow their own teachings.

Every woman must have the freedom of choice to follow her personal and religious and moral convictions concerning the completion or termination of her pregnancy.

UNITED METHODIST CHURCH
(General Conference, 1976, 1984)

When an unacceptable pregnancy occurs, a family, and most of all the pregnant woman, is confronted with the need to make a difficult decision. We believe that continuance of a pregnancy which endangers the life or health of the mother, or poses other serious problems concerning the life, health, or mental capability of the child to be, is not a moral necessity. In such a case, we believe the path of mature Christian judgment may indicate the advisability of abortion. We support the legal right to abortion as established by the 1973 Supreme Court decisions. We encourage women in counsel with husbands, doctors, and pastors to make their own responsible decisions concerning the personal or moral questions surrounding the issue of abortion. (Resolution on Responsibile Parenthood, 1976).

Our belief in the sanctity of unborn human life makes us reluctant to approve abortion. But we are equally bound to respect the sacredness of the life and well-being of the mother, for whom devastating damage may result from an unacceptable pregnancy. In continuity with past Christian teaching, we recognize tragic conflicts of life with life that may justify abortion (Social Principles, 1984).

UNITED METHODIST CHURCH,
NATIONAL YOUTH MINISTRY ORGANIZATION
(Biennial Convocation, 1983)

Freedom of choice in problem pregnancies must be based on the moral judgment of the involved individuals.

Where there is no consistent medical, ethical, or theological consensus, the U.S. Constitution should not be used to force one theological view on all citizens who may believe otherwise.

The U.S. Supreme Court decision of Roe

v. Wade in 1973 guarantees a woman the right to make a personal decision regarding termination of a pregnancy. Any amendment to deconstitutionalize the issue of abortion and invalidate the 1973 decision could set a precedent for endangering all our civil liberties.

UNITED METHODIST CHURCH, WOMEN'S CHURCH, GENERAL BOARD OF GLOBAL MINISTRIES (1975, reaffirmed 1979, 1980)

We believe deeply that all should be free to express and practice their own moral judgment on the matter of abortion. We also believe that on this matter, where there is no ethical or theological consensus, and where widely differing views are held by substantial sections of the religious community, the Constitution should not be used to enforce one particular religious belief on those who believe otherwise.

UNITED PRESBYTERIAN CHURCH IN THE U.S.A.
(General Assembly, 1972,
reaffirmed 1978)

Whereas, God has given persons the responsibility of caring for creation as well as the ability to share in it, and has shown his concern for the quality and value of human life; and

Whereas, sometimes when the natural ability to create life and the moral and spiritual ability to sustain it are not in harmony, the decisions to be made must be understood as moral and ethical ones and not simply legal;

Therefore, in support of the concern for the value of human life and human wholeness...the 184th General Assembly:

b. Declares that women should have full freedom of personal choice concerning the competion or termination of their pregnancies bnd that artificial or induced termination of pregnancy, therefore, should not be

restricted by law, except that it be performed under the direction and control of a properly licensed physician.

UNITED SYNAGOGUE OF AMERICA
(Biennial Convention, 1975)

"In all cases 'the mother's life takes precedence over that of the foetus' up to the minute of its birth. This is to us an unequivocal principle. A threat to her basic health is moreover equated with a threat to her life. To go a step further, a classical responsum places danger to one's psychological health, when well established, on an equal footing with a threat to one's physical health." (1967)

(A)bortions, "though serious even in the early stages of conception, are not to be equated with murder, hardly more than is the decision not to become pregnant."

The United Synagogue affirms once again its position that "abortions involve very serious psychological, religious, and moral

problems, but the welfare of the mother must always be our primary concern."

WOMEN OF THE EPISCOPAL CHURCH
(Triennial Meeting, 1973)

WHEREAS the Church stands for the exercise of freedom of conscience by all and is required to fight for the right of everyone to exercise that conscience, THEREFORE, BE IT RESOLVED that the decision of the U.S. Supreme Court allowing women to exercise their conscience in the matter of abortion be endorsed by the Church.

WOMEN'S LEAGUE FOR CONSERVATIVE JUDAISM
(Biennial Convention, 1982)

Reverence for life is the cornerstone of our Jewish heritage. Since abortion in Jewish law is primarily for the mother's physical or mental welfare we deplore the burgeoning casual use of abortion. Abortion should be "legally available, but ethically restricted. Though the abortion of a fetus is not equivalent to taking an <u>actual</u> life,

it does represent the destruction of potential life and must not be undertaken lightly...."

However, Women's League also believes that the practice of the principle of the separation of church and state guaranteed by our Constitution has kept our nation strong and preserved full freedom for the individual. Women's League believes that transmitting religious values is the responsibility of the religious sector.

YOUNG WOMEN'S CHRISTIAN
ASSOCIATION OF THE U.S.A.
(1979)

As an organization rooted in the Christian faith, the YWCA is deeply conscious of the difficult personal and ethical choices raised by the issue of abortion.

The position of the YWCA is not "pro-abortion." It is a position supporting a woman's right to make an individual decision based upon her own religious and

ethical beliefs and her physician's guidance. The answer to the question, "When does personhood begin?" must remain in the ethical and religious realm.

Since there is a wide variation of opinion among religious groups and individuals in our pluralistic society as to when personhood begins and what an ethical decision on abortion may be in different circumstances, the YWCA holds that no <u>one</u> religious belief should be mandated by law. Our government is expressly comManded to make no law establishing any one religion or prohibiting free expression of religion.

APPENDIX D

A CALL TO CONCERN
(Signed by 220 American religious ethicists in 1978)

The increasing urgency of the issue of abortion rights requires us as teachers and writers of religious ethics to speak out.

Abortion is a serious and sometimes tragic procedure for dealing with fetal life. It raises important ethical issues and cannot be blandly legitimized by the mere whim of an individual. Nevertheless, it belongs in that large realm of often tragic sctions where circumstances can render it a less destructive procedure than the rigid prolongation of pregnancy.

We support the Supreme Court decisions of 1973 which had the effect of removing abortion from the criminal law codes. The Court did not appeal to religion or ethics in arriving at its judgment, but we believe the

decision to have been in accord with sound ethical judgment. Taking note of the fact that theologians, as well as other experts, disagree on the fundamental moral question of when life begins, the Court decided that the law ought not to compel the conscience of those WHo believe abortion to be in harmony with their moral convictions.

In the last four years, however, those decisions have been subjected to a relentless attack from those who take the absolutist position that it is always wrong to terminate a pregnancy at any time after the moment of conception. Those who take this absolutist position have not hesitated to equate abortion at any stage of pregnancy with murder or manslaughter. From such an extreme viewpoint, all legal means are considered justified if they limit abortion, no matter what the human consequences for poor women and others--as in the recent efforts to deny

Medicaid funds and to prohibit use of public hospitals for abortion services.

We feel compelled to affirm an alternative position as a matter of conscience and professional responsibility.

1. The most compelling argument against the inflexibility of the absolutist position is its cost in human misery. The absolutist position does not concern itself about the quality of the entire life cycle, the health and well-being of the mother and family, the question of emotional and economic resources, the cases of extreme deformity. Its total preoccupation with the status of the unborn renders it blind to the well-being and freedom of choice of persons in community.

2. "Pro-life" must not be limited to concern for the unborn; it must include a concern for the quality of life as a whole. The affirmation of life in Judeao-Christian ethics requires a commitment to make life

healthy and whole from beginning to end. Considering the best medical advice, the best moral insight, and a concern for the total quality of the whole life cycle for the born and the unborn, we believe that abortion may in some instances be the most loving act possible.

3. We believe it is wrong to deny Medicaid assistance to poor women seeking abortions. This denial makes it difficult for those who need it most to exercise a legal right, and it implies public censure of a form of medical service which in fact has the moral support of major religious groups.

4. We are saddened by the heavy institutional involvement of the bishops of the Roman Catholic Church in a campaign to enact religiously-based anti-abortion commitments into law, and we view this as a seirous threat to religious liberty and freedom of conscience. We acknowledge the

legal right of all individuals and groups, both religious and secular, to seek laws that reflect their religious and ethical beliefs. But the institutional mobilization of Roman Catholic dioceses, including massive financial contributions by those dioceses to the National Committee for a Human Life Amendment, is inappropriate on this issue. If successful, it would violate the deeply held religious convictions of individual members and official bodies of many other religious groups about when human personhood begins, the relative rights of a woman and a fetus, and responsible family life. This is particularly a problem when there is no clear majority opinion on these fundamental issues nor an adequate social base of consensus for legitimate and enforceable legislation.

5. <u>We call upon the leaders of religious groups supporting abortion rights to speak out more clearly and publicly in</u>

response to the dangerously increasing influence of the absolutist position. There may be some ecumenical risks in such candor, but those risks have already been assumed by those who have pressed the absolutist position on religious grounds. In the long run, the true test of ecumenical authenticity is the ability to sustain dialogue and friendship in spite of very sharp disagreements on matters of substance.